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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/868,680	08/20/2001	Klaus Pfaffelhuber	MUE-0002	3010
23413	7590	07/19/2005	EXAMINER	
CANTOR COLBURN, LLP 55 GRIFFIN ROAD SOUTH BLOOMFIELD, CT 06002			LOCKETT, KIMBERLY R	
			ART UNIT	PAPER NUMBER

2837

DATE MAILED: 07/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 09/868,680	<b>Applicant(s)</b> PFAFFELHUBER ET AL.	
	<b>Examiner</b> Kim R. Lockett	<b>Art Unit</b> 2837	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-31 and 33-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- |                                                                                              |                                                                             |
|----------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____.  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____. | 6) <input type="checkbox"/> Other: _____                                    |

### ***Allowable Subject Matter***

Prosecution on the merits of this application is reopened on claims 1-35 considered unpatentable for the reasons indicated below:

The applicant is advised that the Notice of Allowance mailed is vacated. If the issue fee has already been paid, applicant may request a refund or request that the fee be credited to a deposit account. However, applicant may wait until the application is either found allowable or held abandoned. If allowed, upon receipt of a new Notice of Allowance, applicant may request that the previously submitted issue fee be applied. If abandoned, applicant may request refund or credit to a specified Deposit Account.

Prosecution on the merits of this application is reopened on claims 1-35 considered unpatentable for the reasons indicated below:

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by EP0897175A2.

EP0897175A2 discloses the use of a sound shielding element (10) for protection from the propagation of sound from a noise area of a room or space into a neighboring room or space comprising at least one panel or layer; and a plurality of small perforations formed in the at least one panel or layer; .001 and .7 mm and a hole surface that ranges between .001 and 8% so that sound waves entering said perforations initiate physical effects in a gas volume contained in said perforations (column 3, lines 1-27).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4- 29 rejected under 35 U.S.C. 103(a) as being unpatentable over EP0897175A2 in view of DeBlander.

EP0897175A2 discloses the use of a sound shielding element (10) for protection from the propagation of sound from a noise area of a room or space into a neighboring room or space comprising at least one board panel or layer; and a plurality of small sieve like perforations formed in the at least one panel or layer; .001 and .7 mm and a hole surface that ranges between .001 and 8% so that sound waves entering said perforations initiate physical effects in a gas volume contained in said perforations (column 3, lines 1-27).

EP0897175A2 does not disclose the specific use of specific thicknesses.

DeBlander discloses the use of a sound-shielding element for protection from the propagation of sound from a noise area of a room or space with a panel thickness between .01 and .7 mm made of polypropylene (column 5, lines 45-50) and aluminium (column 6, lines 15-20).

With regards to claims 13-28 the recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the sound shielding element as disclosed by EP0897175A2 with the panel thickness as disclosed DeBlander in order to provide an efficient means of noise attenuation.

5. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over EP0897175A2 in view of DeBlander and Albera et al.

EP0897175A2 and DeBlander do not disclose the specific use of impregnating.

Albera et al discloses the use of a sound-shielding element that use impregnated textile fibers that are impregnated with thermoplastic resin.

2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the sound shielding element as disclosed by EP0897175A2 with the panel thickness as disclosed DeBlander and the impregnated fibers as disclosed by Albera et al in order to provide a soundproof device that is decreased in weight.

6. Claims 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP0897175A2 in view of DeBlander and Tschdin-Mahrer.

EP0897175A2 and DeBlander do not disclose the specific use of a needle tool.

Tschdin-Mahrer discloses the use of panel with perforations made with a needle tool (column 1, lines 65-69).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the sound shielding element as disclosed by EP0897175A2 with the panel thickness as disclosed DeBlander and the needle tool as disclosed by Tschdin-Mahrer in order to provide an efficient means of perforating acoustic attenuators.

7. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over EP0897175A2 in view of Koss.

EP0897175A2 does not disclose the specific use of a weaving.

Koss discloses the use of an acoustic panel that uses weave as a means of forming fibers (column 3, lines 1-25).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the sound shielding element as disclosed by

EP0897175A2 with the weaving characteristics as disclosed by Koss in order to provide a panel with improved flow characteristics.

8. Claim 32 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Papers related to this application may be submitted to Group 2800 by facsimile transmission. Papers should be faxed to Group 2800 via the PTO 2800 Fax Center at 703-872-9306.

For assistance in **Patent procedure, fees or general Patent questions** calls should be directed to the **Patents Assistance Center (PAC)** whose **telephone number is 800-786-9199**. Assistance is also available on the Internet at [www.uspto.gov](http://www.uspto.gov).

Any inquiry concerning **this communication or earlier communications from the examiner** should be directed to **Kim Lockett** whose **telephone number is (703) 308-7615, after 2/3/04 my new number will be (571) 272-2067**. The examiner can normally be reached on Tuesday through Friday from 6:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Martin can be reached on (571) 272-2107.



**KIMBERLY LOCKETT  
PRIMARY EXAMINER**